

8-4-2008

AUG 4 2008

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

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Thomas O'Farrell - K54340,	)	Habeas Corpus Petition
Plaintiff,	)	Case # 08 C 2403
	)	Honorable Milton I. Shadur,
v.	)	Presiding Senior Judge
	)	
Joseph Mathy, Assistant Warden,	)	Judge Keys,
Defendant,	)	Magistrate Judge

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MOTION FOR CERTIFICATE OF APPEALABILITY ON APPEAL FROM  
DENIAL OF WRIT OF HABEAS CORPUS

Now Comes, Thomas O'Farrell - K54340, Plaintiff, Pro-Se, pursuant to Federal Rules of Appellate Procedure, Rule 22(b), and requests that this Honorable Court grant said motion. In support, Plaintiff states as follows:

To the Honorable Milton I. Shadur, Senior United States Judge, Northern District of Illinois, Eastern Division:

1) This Court dismissed Plaintiff's petition for writ of habeas corpus by an order dated June 18, 2008.

2) Plaintiff filed a motion for reconsideration and leave to file reply to State's limited response to petition for writ of habeas corpus instantter with reply on June 25, 2008.

3) This Court denied said motion by an order dated July 21, 2008.

4) The detention complained of by Plaintiff arose out of process issued by the State Court, to wit: Plaintiff was tried, found guilty of the offense of first degree murder (720 ILCS 5/9-1) and sentenced to a term of fifty years within the Illinois Department of Corrections by the Honorable Michael P. Toomin, Cook County Circuit Court, Illinois.

5) Under Rule 22(b)(1) of the Federal Rules of Appellate Procedure, Plaintiff may not appeal to the United States Court of Appelas for the Seventh Circuit from the denial of his petition for writ of habeas corpus without a Certificate of Appealability.

6) Plaintiff filed a notice of appeal from the July 21, 2008 order on July 30, 2008. (see enclosed documents).

7) In addition to the reasons given within Plaintiff's petition for writ of habeas corpus, a Certificate of Appealability should be issued for the following reason: It should be clear to anyone that Plaintiff has made a serious and substantial showing of actual and/or factual innocence in and through his claim of denial of his Constitutional Rights to effective assistance of counsel (see Ground Two, pages 9-10 within Plaintiff's petition for writ of habeas corpus), thus resulting in a fundamental miscarriage of justice as Plaintiff is currently incarcerated and sentenced for a crime which he did not commit.

8) The United States Supreme Court has ruled the "ends of justice" requires Federal Courts to entertain such petitions where the prisoners Constitutional claim is one of a colorable showing of factual innocence. Kuhlman v. Wilson, 106 S.Ct. 2616. "Where a Constitutional violation has probably resulted in the conviction of one who is 'actually innocent', a Federal Court may grant the writ even in the absence of a showing of cause for procedural default." Schulp v. Delo, 115 S.Ct. 851; Murray v. Carrier, 106 S.Ct. 2639; and Dugger v. Adams, 109 S.Ct. 1211.

9) As previously mentioned, Plaintiff made his showing of actual and/or factual innocence within his petition for writ of habeas corpus which both the State and this Court ignored not once, but twice, as Plaintiff within his reply to State's limited response to petition for writ of habeas corpus attempted to inform this Court of the actual and/or factual innocence claim (see reply, pages 2&3) as to show that the fundamental miscarriage of justice excuses any procedure default, such as the 1 year time limitation for filing a petition for writ of habeas corpus both the State and this Court relied upon for dismissal of said petition. Therefore, Plaintiff believes that this Honorable Court erred in dismissing his petition without entertaining the actual and/or factual innocence/fundamental miscarriage of justice claim within his petition for writ of habeas corpus (see Ground Two, pages 9-10).

Wherefore, Plaintiff respectfully requests that Your Honor issue a Certificate of Appealability so that he may appeal this Courts ruling to the United States Court of Appeals, Seventh Circuit of Illinois.

Date: July 27, 2008

  
Thomas O'Farrell-K54340  
Pro-Se, Plaintiff